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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,010	05/02/2001	Ioana M. Rizoia	B19485P	5692

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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 10/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on July 9, 2007

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-28, 31-35, 38 1-38 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
☒ Claim(s) 29, 36, 37 is/are allowed.  
☒ Claim(s) 1-28, 31-35, 38 is/are rejected.  
☐ Claim(s) \_\_\_\_\_ is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☒ Notice of Reference Cited, PTO-892  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application PTO-159

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Exactly what constitutes "absorption", "highly absorbed"; and "not highly absorbed" is unclear especially in view of the fact that no wavelength other than those disclosed in the parent are disclosed in the instant application and in the parent case, these wavelength are described only as "highly absorbed". The claims are replete with functional language not of the proper form to be considered a structural limitation (see MPEP 2181). Claim 21 is indefinite as exactly what constitutes "suitable for cutting or ablating skin" is unclear, since thermal cutting forces have been used to cut skin for years.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application

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being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-4, 6-14, 17, 19, 23-28 and 35-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Itzkan.

The liquid is not highly absorbant of the laser radiation but will heat the liquid to some extent which will, in turn exert a "disruptive force" in the tissue beneath.

5. Claim 31 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Rizioiu et al (W.O. '928)

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 8, 10-15, 17-21, 23-28 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizioiu et al (1994 - "The Efficiency...") in combination with Buys et al. Rizioiu et al (1994 - "The Efficiency...") teach a device such as claimed except the contacting leg (please note that all structures predicated on the contacting leg e.g. the shape thereof are also absent). Buys et al teach the use of a contacting leg to maintain the optical fiber the appropriate distance from the surface wherein the perimeter of the leg is circular and the outer edge is rectangular shaped. It

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would have been obvious to the artisan of ordinary skill to employ a contacting leg as taught by Buys et al since this establishes and maintains the firing distance and uniformity of the impacts, as taught by Buys et al, thus producing a device such as claimed.

8. Claims 22, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over RizoIU et al (1994 - "The Efficiency...") in combination with Buys et al as applied to claims 1, 2, and 21 above, and further in view of RizoIU et al (1994 - "New laser..."). RizoIU et al (1994 - "New Laser...") teach scanning energy above the surface to be removed, using an Er:YAG laser. It would have been obvious to the artisan of ordinary skill to employ the Er:YAG laser and scanning means, as taught by RizoIU et al 1994 - "New Laser..." since this laser also produces the hydrokinetic effect and to scan the beam, since this would enable the treatment of a larger area, thus producing a device such as claimed.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over RizoIU et al (1994 - "The Efficiency...") in combination with Buys et al as applied to claims 1 and 2 above, and further in view of RizoIU et al (U.S. '247). RizoIU et al (U.S. '247) teaches having adjustable moisture output. It would have been obvious to the artisan of ordinary skill to provide an adjustable moisture flow, since this would enable the coarseness and the depth of the cut to controlled as taught by RizoIU et al (U.S. '247) thus producing a device such as claimed.

10. Claims 29, 30 and 37 are allowed.

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11. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Shay whose telephone number is (703) 308-2215. The examiner can normally be reached on Tuesday-Friday.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

David Shay:bhw.



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330